1957.

File No. Partnership II / 51(R)

Legal Department
B **BRANCH**

Subject:— Rules under the Indian Partnership Act, 1932

P:4
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File No. Partnership II/51(R)

Gen. 194 e.

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Office of the H.L.A.

Para. 2 of H.D. note.- The Bombay Advocates Association has pointed out that a statement to be submitted under section 60 of the Partnership Act, 1932, has to be verified under the Bombay Partnership Rules, 1932, by a witness who must be a Notary Public, Gazetted Officer, Justice of Peach, Magistrate or an Attorney of the High Court and has suggested to Government to modify the said Rules so as to enable an Advocate or pleader or Registered Accountant to verify such statement. The Registrar of Firms, Bombay, to whom the papers were shown by the Home Department has pointed out in para 2 of his letter at p. 3 ante, the administrative difficulties in the way of accepting the suggestion. The similar suggestion from the Bombay Advocates Association was received by the H.C.M. and the Legal Department, to whom the letter was shown, has advised the Government that there is no objection from the legal point of view to accept the suggestion and pointed out to the F.D. that the Central Government while extending the provisions of the Indian Partnership Act to Kutch have framed rule enabling inter alia the pleader entitled to practice in the Court of the Judicial Commisssioner, Kutch, to verify statements. The H.D.'s attention is drawn to this Department, endorsement No.208 dated 18th January 1951 to whom the case was transferred on the advice of the F.D.

2. Para. 3 of H.D.'s note.- The H.D. states that the Registrar of Firms has suggested some amendments to the Bombay Partnership Rules, 1932 in view of the experience gained by him in administering the Act and the Rules made thereunder. The necessity for the

amendments....

amendments of the rules has been discussed by the Registrar of Firms in his letter at pp. 3 to 10 of the correspondence section. The R.L.A. is requested to offer his remarks on the proposals made by the Registrar of Firms and to furnish thenecessary draft amendment rules on the lines proposed by the Registrar of Firms.

3. A revised draft notification is sent herewith subject to the folliwing observations:-

(1) Amendment to rule 5.- It is stated that documents in all languages are to be registered and therefore it is necessary that the translation should be certified as true. The Registrar has, therefore, proposed the amendment of rule 5 of the Bombay Partnership Rules,; 1932, so as to provide that the translation in English shall be certified as correct by at leastm one of the partners or attesting witnesses. The function of attesting witnesses is to verify that any or all of the partners of a firm have signed the statement in ~~xhexx~~ their presence. Beyond this functicn no responsibiility as to the correctness of English translation of the document can be thrown upon witnesses. The amendment proposed to rule,5, in so far as it required axn attesting witness to certify the correctness of English tranlation, is not in order.

(ii) Amendment of rule 9.- The Registrar of Firms proposes to provide that the fees payable to the Registrar for filing documents etc. or for taking copies from the Registrar of Firms shall be the maximum fees as prescribed in the Schedule to the Act. The Bombay Partnership Rules have been made under sub-section (2) of section 71 of the Indian Partnership Act, 1932. Sub-section (1) of

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section 71 of the Act also provides for the making of rules prescribing the fees which shall accompany the documents sent to the Registrar of Firms etc. and the proviso to that sub-section provides that such fees shall not exceed the maximum fees specified in Schedule I. The proposal made by the Registrar may be given effect to by making a spearate set of rules under sub-section (1) of section 71 of the Act instead of amending rule 8 as the said rules are made under sub-section (2) of section 71. A requisite draft of such rule is forwarded herewith.

(iii) Amendment to rule 12(3).- The Home Department has not confirmed the statement made by the Registrar of Firms that Government has decided in 1943 that Rules for destruction of superfluous office record should be made under the Partnership Rules and not under the Destruction of Records Act,1917. A necessary rule has been embodied, but H.D. may examine the question further.

(iv) Amendment to rule 13.- The Registrar proposess that a Card Index to the Register should not include the particulars regarding the "addresses and trade" on the grounds that section 58 of the Act only refers to the place of business of the firm. The Registrar has ignored the protisions of section 60 of the Act which provides that when an alteration is made in the location of the principal place of business of a registered firm, a statement is to be submitted in the manne provided in that section. Form B prescribed under section 60 also contains a column for showing the change in the location of the principal place of business of the firm. The view taken by the Registrar

that.....

that merely stating the name of the city may satisfy the requirements of section 58, is not corect.There is not objo tion, however, to delete the word 'trade' from rule 13 as proposed by the Registrar.

(v) New rule 15.- The Registrar proposes that he should have the power to refuse to register any application or notice if the same is not duly tendered in the prescribed form and manner within 14 days of the date of signing such application or notice. In view of the provisions of section 68 of the Act read with section 64(2) thereof, the proposed amendment is ultra vires. New rule 16 proposed by the Registrar is however, in orde .

(vi) The Registrar proposes to insert new rule 18 for the reasons that according to him serious complications frequently arise when partners trade under different names and the object of the rule is to require the partners, carrying on different firms under two different names, to register such firm separately. The obligation on the partners to register their firms cannot be imposed by means of rules in view of the express provision of section 69 of the Act, which describes the effect of non-registration of a firm. It should be left to partners whether they want to take benefit of the Indian Partnership Act or not. The rule for compulsory registration will not be covered by the provisions of the Act.

Id/ J.R.D.
14/3

Remembrancer of Legal Affairs.

U.R. to H.D. No.4211,

dated the 14th March 1951.